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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,150	04/16/2004	Franklin D. Lomax JR.	248992US23	7835

22850 7590 08/08/2006

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EXAMINER

NGUYEN, CAM N

ART UNIT PAPER NUMBER

1754

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,150	LOMAX ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cam N. Nguyen	1754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/06/06 (an election).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 and 32-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on originally filed is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### **Response to Election/Restrictions**

1. Applicant's election with traverse of Group I, claims 21-31, in the reply filed on July 06, 2006 is acknowledged. The traversal is on the ground(s) that "all three groups should be examined together because they have the same technical feature, etc..."

This is not found persuasive because each group of inventions is drawn to a different classification since they do not contain the same subject matter or related to one another. The inventions also do not depend on each other for completeness.

Specifically, the catalyst support material of Group I contains "95% volume or more of alkaline-earth metal hexaaluminate, etc.", whereas the support material required in claim 21 is a "monoclinic zirconia", which is not the same as the support of Group I. If all three inventions are searched, an additional burden is imposed on the Office due to three different search areas being required.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-20 & 32-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 06, 2006.

**Claim Objections**

3. Claim 21 is objected to because of the following informalities: in line 1, "that can be used for" should be changed to--for use in--. Appropriate correction is required.

**Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff-Doring et al., "hereinafter Wulff-Doring", (US Pat. 6,034,029) *in view of* Symons et al., "hereinafter Symons", (US Pat. 6,561,747 B2).

Wulff-Doring discloses a zirconium dioxide support material, which is monoclinic to at least 80% by weight and has a surface area of at least 100 m<sup>2</sup>/g (see col. 7, claim 1 & col. 3, ln 35-39).

Wulff-Doring does not disclose Ir and additional metals recited in claim 31. However, it would have been *prima facie obvious* to one of ordinary skill in the art at the time the invention was made to have incorporated by adding the iridium (Ir) and ruthenium (Ru) to the catalyst support material of Wulff-Doring in order to achieve a useful catalyst that is capable of ionizing oxygen because these metals are known catalyst metals as shown in Symons (see Symons at col. 5, ln 38-45).

**Citations**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All references are cited for related art. See PTO-892 Form attached.

**Conclusion**

7. Claims 1-46 are pending. Claims 21-31 are rejected. Claims 1-20 & 32-46 are withdrawn due to non-elected (distinct) invention(s). No claims are allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cam N Nguyen, whose telephone number is 571-272-1357. The examiner can normally be reached on M, W, R, & F, 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen/cnn *CNN*

August 06, 2006

*Cam Nguyen*  
CAM N. NGUYEN  
PRIMARY EXAMINER

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